

STANDARD CRIMINAL 9

Flight or Concealment

In determining whether the State has proved the defendant guilty beyond a reasonable doubt, you may consider any evidence of the defendant's running away, hiding, or concealing evidence, together with all the other evidence in the case. [You may also consider the defendant's reasons for running away, hiding, or concealing evidence.] Running away, hiding, or concealing evidence after a crime has been committed does not by itself prove guilt.

SOURCE: RAJI (Criminal) No. 9 (1996).

USE NOTE: Use language in brackets if supported by the facts. Case law allows the jury to consider the defendant's offered reasons for the alleged flight or concealment. *State v. Hunter*, 136 Ariz. 45, 49, 664 P.2d 195, 199 (1983). Thus, the bracketed language should be given only upon the defendant's request.

"Use of the flight instruction is proper where the circumstances of leaving the crime scene reveal a defendant's consciousness of guilt. It is not necessary to show that law enforcement officers were pursuing the defendant at the time in order to satisfy the "consciousness of guilt" requirement. Merely leaving the crime scene is not tantamount to flight. The inquiry focuses on "whether [the defendant] voluntarily withdrew himself in order to avoid arrest or detention." *State v. Wilson*, 185 Ariz. 254, 257, 914 P.2d 1346, 1349 (App. 1995).

"A two-fold test must be applied to determine whether a **flight instruction** should be **given**. First, the evidence is viewed to ascertain whether it supports a reasonable inference that the **flight** or attempted **flight** was open, such as the result of an immediate pursuit. If this is not the case then the evidence must support the inference that the accused utilized the element of concealment or attempted concealment. The absence of any evidence supporting either of these findings would mean that the **giving** of an **instruction** on **flight** would be prejudicial error." *Wilson, supra*, 185 at 257, 914 at 1349.

Depending on the facts, the failure of a defendant to appear at trial may be justification for the court to give a flight instruction. *State v. Roderick*, 9 Ariz. App. 19, 22-23, 448 P.2d 891, 894-895 (1968). Absence of the defendant at the time set for trial after being released on bond, is insufficient to support an inference of the element of concealment or attempted concealment, which is essential to warrant the giving of a flight instruction unless the flight or attempted flight is open, as upon immediate pursuit. *State v. Camino*, 118 Ariz. 89, 91, 574 P.2d 1308, 1310 (App. 1977).